

ORDINANCE NO. 99- 366

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
ADDING CHAPTER 4-15 TO THE LOS ALTOS MUNICIPAL CODE
TO PROVIDE FOR THE ABATEMENT OF GRAFFITI

The City Council of the City of Los Altos does hereby ordain as follows:

Section 1. There is hereby added to the Los Altos Municipal Code, a new Chapter 4-15 entitled "Abatement of Graffiti", in the form as set forth the Exhibit attached hereto and incorporated herein by reference as if fully set forth.

Section 2. This ordinance shall take effect upon the commencement of the thirty-first day following the date of its passage and adoption.

Section 3. Council hereby finds and declares that adoption of this ordinance will have no adverse environmental effect.

Section 4. This ordinance shall be published as provided in Government Code section 36933.

The above and foregoing ordinance was duly introduced at a regular meeting of the Los Altos City Council held on December 15, 1998, and was thereafter, at a regular meeting of the Los Altos City Council held on January 12, 1999, passed and adopted by the following roll call vote:

AYES: Mayor Becker, Councilmembers Casto, LaPoll, Lear, and Moss

NOES: None

ABSENT: None


Mayor

ATTEST:


City Clerk

CHAPTER 4-15. ABATEMENT OF GRAFFITI.

SEC. 4-15.10. Declaration that graffiti is a public nuisance.

The city council hereby declares that graffiti is a public nuisance which may be abated pursuant to the procedures set forth in this chapter, in addition to other remedies under the law.

SEC. 4-15.20. Graffiti Defined.

Graffiti. For the purposes of this chapter, "graffiti" includes any unauthorized inscription, writing, lettering, word, drawing, figure, marking, painting or design that is marked, written, etched, scratched, drawn or painted on any real or personal property.

SEC. 4-15.30. Graffiti prohibited.

It is unlawful for any person who owns or is otherwise in control of any real or personal property within the city to suffer, permit or allow graffiti to remain upon said real or personal property, or to grant permission to or authorize any persons to place graffiti upon any real or personal property, when the graffiti is or would be visible from the street or any other public or private property. For the purposes of this chapter, real and personal property includes, but shall not be limited to, buildings or other structures, such as walls; fences; signs; retaining walls; driveways; walkways; sidewalks; curbs; street lampposts; hydrants; trees; electric, light, power, telephone or telegraph poles; drinking fountains, and garbage receptacles. This chapter shall apply to both public and private property in all zoning districts of the city.

SEC. 4-15.40. Removal of graffiti.

a. Removal by city with consent of owner. Whenever graffiti exists upon private property located within the city, the city may remove such graffiti with the written consent of the property owner, or, in the case of public property, of the public entity which owns or has control over the property.

b. Removal by property owner. Property owners shall remove all graffiti from their property by no later than ten (10) days after it is placed upon their property. Paint used to cover the graffiti shall match the original surface color to the extent feasible. Except as otherwise provided in this chapter, failure of the property owner to remove the graffiti within this time shall cause the property to become subject to the graffiti abatement procedure, as set forth in Sec. 4-15.50 below.

SEC. 4-15.50. Graffiti abatement procedure.

The procedure for the abatement of graffiti on real and personal property in the city shall be as follows:

A. Order to remove graffiti.

Upon the failure of a property owner to remove graffiti from his/her real or personal property within ten (10) days, the City shall serve on the property owner an order to remove graffiti. The order to remove graffiti shall state:

1. A description and the location of the real or personal property on which the graffiti has been placed;
2. A brief description of the unlawful graffiti that must be removed;
3. A specific date by which the graffiti must be removed, along with a statement that if the property owner does not remove the graffiti within this time, the city may cause the graffiti to be removed and may make the costs incurred in this work a personal debt of the property owner or a special charge against the property;
4. A statement that the property owner may request a hearing before the City Manager on the order to remove graffiti, by complying with the procedures set forth in Sec. 4-15.50 B and that if the property owner does not file a timely request for a hearing, he/she shall be deemed to have waived the right to any administrative hearing and appeal.

B. Procedure for obtaining hearing before City Manager on order to remove graffiti.

The owner of the real or personal property on which the graffiti has been placed may obtain a hearing before the City Manager on the order to remove graffiti by filing a written request for a hearing, which shall state the address and/or a brief description of the property, the date of the order to remove graffiti, and the grounds on which the order is contested, with the City Clerk within ten (10) days after service of the order. The City Manager shall then set the matter for a hearing before the City Manager or his/her designee on a date which is no less than ten (10) days and no more than thirty (30) days after the receipt of the request for a hearing and shall give the property owner or other person requesting the hearing written notice of the date, time, and place of the hearing through the procedures set forth hereinafter.

C. Waiver of right to hearing and appeal.

If the owner or person in control of the real or personal property on which the graffiti has been placed does not timely comply with the above procedures, he/she shall be deemed to have waived the right to an administrative hearing and any appeal on the notice and order.

D. Hearing before City Manager.

Unless otherwise continued for good cause, the hearing shall be held at the date, time and place specified by the City Manager in the notice served on the property owner. At the hearing, the property owner shall have the right to be represented by counsel and may present relevant evidence and arguments in favor of modifying or reversing the order to remove graffiti. In lieu of appearing at the hearing, the property owner may submit a written statement signed under penalty of perjury which states any evidence or arguments in favor of modifying or reversing the order to remove graffiti.

E. Decision of City Manager on order to remove graffiti.

Within ten (10) days after the conclusion of the hearing, the City Manager shall issue a written decision on the order to remove graffiti, which states the following:

1. Whether the order is upheld, reversed or modified, along with specific factual findings upon which this decision is based;
2. The nature of any modifications to the order;
3. Unless the order is reversed, a specific date by which the graffiti must be removed and a brief description of the graffiti, including its location;
4. A statement that the property owner may appeal the decision of the City Manager to the Superior Court;
5. A statement that unless a timely appeal to the Superior Court is filed, the decision of the City Manager is final and takes effect on the date of its service on the property owner, and that unless the graffiti is removed by the time specified in the decision of the City Manager, the city may cause the graffiti to be removed and may make the costs of this work a personal debt of the owner or a special charge the property.

SEC. 4-15. 60. Abatement of graffiti by city if property owner does not comply with order of City Manager.

If the property owner or person in control of the property fails to timely comply with the order to remove graffiti issued by the City Manager, or, in the event of an unsuccessful appeal, the City Manager may cause the graffiti to be removed from the property either by city personnel or by hiring outside persons to perform this work. The City Manager shall obtain the written permission of the property owner or court authorization before permitting workers to enter the property to remove the graffiti.

SEC. 4-15.70. Recovery of expenses incurred by city in removing graffiti

a. **Filing of report on expenses incurred in removing graffiti.** The City Manager shall keep a detailed itemized record of the expenses incurred by the city in administrative time and overhead, and in removing the graffiti from the property, including all costs of the services of the City Attorney. Upon the completion of the work, or as soon thereafter as may be practicable, the City

Manager shall file with the city clerk a report which specifies the address or location of the property and the location of the graffiti removed, the nature of the work performed in removing the graffiti, and the itemized and total of the cost of this work. A copy of this report shall be served on the property owner through the procedure set forth in Sec. 4-15.80.

b. Setting of hearing before city council on report on expenses incurred in removing graffiti. Upon receipt of the itemized report of expenses from the City Manager, the city clerk shall set a hearing on the report before the city council, on a date which is no less than ten (10) and no more than sixty (60) days after service of the report on the property owner. A notice which specifies the date, time and place of the hearing shall be served on the property owner through the procedure set forth in Sec. 4-15.80.

c. Hearing before city council on report of expenses incurred in removing graffiti. Unless otherwise continued for good cause, the city council shall hold the hearing at the date, time and place specified in the notice served on the property owner. At the hearing, the City Manager shall present the report to the city council, and the property owner shall have the right to present any objections to the report. Both the City Manager and the property owner shall have the right to be represented by counsel.

d. Decision of city council. At the conclusion of the hearing, or within thirty (30) days thereafter, the city council shall approve, reject or modify the City Manager's report on expenses incurred in removing the graffiti and shall issue a written decision which specifies the amount and nature of approved expenses incurred by the city in removing the graffiti that shall be recovered from the property owner and provides that such expenses shall be made either a personal debt of the property owner or a special charge against the property. If the amount of any special charge imposed exceeds One Thousand Dollars (\$1,000), the city council may provide in its decision that the special assessment lien may be payable in not more than five (5) equal annual installment payments. A copy of the city council's decision shall be served on the property owner pursuant to Sec. 4-15.80.

e. Collection of personal debt of property owner for expenses incurred by city in removing graffiti. If the city council designates that the approved expenses incurred by the city in removing the graffiti shall be a personal debt of the property owner, the full amount of these expenses shall be due and payable by the property owner within thirty (30) days of service of the city council's decision on the property owner. If the property owner fails to pay the entire amount due within this time, the debt shall become delinquent and may be collected by the city through any legal means, and shall include reasonable attorneys' fees in any judgment obtained. Interest shall accrue on the unpaid debt at the rate of ten (10) percent per year.

f. Recordation of decision of city council and notice of special charge. If the city council's decision designates the amount of approved expenses as a special charge to be levied against the property, the City Manager shall cause a copy of the city council's decision and a notice of special charge lien, which states the amount of the special charge made against the property for graffiti removal, to be recorded at the office of the county recorder. The total cost incurred by the city for the removal of graffiti from the property, as confirmed by the city council's decision, shall immediately, upon recordation, constitute a special charge lien against the property. Such special charge lien shall be subordinate to all existing special liens existing on the same property but shall be paramount to all other liens except for state, county and municipal taxes, with which it shall be at parity. The lien shall continue until the charge and any interest due and payable thereon are paid.

g. Filing of decision of city council and notice and special charge with county auditor-controller. A certified copy of the city council's decision and notice of special charge lien shall be filed with the Santa Clara County Auditor-Controller on or before August 1st of each year, whereupon it shall be the duty of the Auditor-Controller to add the amounts of the special charge to the next regular tax bills levied against the property for municipal purposes and thereafter such amounts shall be collected at the same time and the same manner as ordinary

municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall apply to such special charge.

h. Interest on special charges. All special charges imposed for the removal of graffiti which remain unpaid after thirty (30) days from the date of their recordation on the tax roll shall become delinquent and shall bear interest at the rate of ten (10) percent per year.

SEC. 4-15.80. Service of notices on property owner.

For the purposes of this chapter, required notices, orders, decisions and other documents shall be served on property owners by personal delivery to the home or place of business or by placing the documents in an envelope which has been addressed to the name and address of the property owner, as indicated on the most recent tax roll or as most recently known to the City, and depositing the envelope in the United States mail, certified, with postage fully affixed and a return receipt requested. A copy of any applicable notices, orders, decisions, or other documents shall also be posted in a conspicuous place on the affected property.

Service of documents is deemed complete three (3) calendar days after the time of the deposit of the notice in the mail or at the time that personal delivery is made.

SEC. 4-15.90. Stay of graffiti abatement proceedings during criminal prosecution of person responsible for graffiti.

In any case in which a criminal prosecution for violation of Penal Code Sections 594 and 640.6, or any other law which authorizes the court to sentence the criminal defendant to remove graffiti that he/she unlawfully placed on property is pending or is to be instituted against the person(s) who placed graffiti upon property in the city, the City Manager may stay, at his/her sole option and discretion, the application of the graffiti abatement procedure set forth in this chapter until the criminal prosecution has been completed and the judgment of the court has been rendered and has become final. If the defendant is found guilty, and

the court sentences the criminal defendant to clean up the graffiti, or to pay for someone else to do so, the criminal defendant shall be responsible for the removal of the graffiti pursuant to this chapter. If the criminal defendant does not remove the graffiti, or pay for someone else to do so, within ten (10) days of the time designated for removal of the graffiti by the court, or in the event of an unsuccessful appeal by the defendant, within ten (10) days of the date on which defendant would be legally required to comply with the trial court's order, the City may require the property owner to remove the graffiti pursuant to this chapter. Nothing in this section shall prevent the property owner from taking legal action to recover the costs of removing the graffiti from the criminal defendant or the city and/or the property owner from taking other legal action against the criminal defendant.

SEC. 4-15.90. Procedures in this chapter cumulative to other legal remedies.

The procedures set forth in this chapter for the removal of graffiti shall be cumulative to, and shall not foreclose the application of, any other existing legal remedies.

SEC. 4-15.100. Criminal penalties.

Any violation of this chapter is an infraction punishable as specified in this code.